

1 BEFORE THE CITY OF CHICAGO POLICE BOARD 2 3 IN THE MATTER OF ) Case No. 13 PB 2827 4 CHARGES FILED AGAINST ) SERGEANT DUANE BENNETT 5 6 30 North LaSalle Street 7 Suite 1220 8 Chicago, Illinois 60602 9 June 5, 2013 10 1:30 p.m.  11 PRESENT: 12 JACQUELINE A. WALKER, Hearing Officer 13 PATRICK POLK 14 Assistant Corporation Counsel on behalf of the Superintendent; 15 DANIEL HERBERT 16 on behalf of the Respondent;  17 18 19 REPORTED BY: 20 PAMELA S. MORGAN, CSR LICENSING NO. 084-001687 21 22 23 24	Page 108  1 HEARING OFFICER WALKER: The first matter 2 before the Police Board is that of 3 Sergeant Duane A. Bennett, Case Number 13-2827. 4 MR. POLK: Patrick Polk for the 5 Superintendent. 6 MR. HERBERT: And good afternoon, Dan Herbert 7 on behalf of Duane Bennett, who is present. 8 HEARING OFFICER WALKER: Okay. This is a 9 continued hearing and we are in the Respondent's 10 case. 11 MR. HERBERT: Yes. 12 HEARING OFFICER WALKER: Okay. Would you call 13 your witness. 14 MR. HERBERT: I will call Duane Bennett. 15 HEARING OFFICER WALKER: Would you swear him 16 in. 17 (The witness was duly sworn.) 18 SERGEANT DUANE BENNETT, 19 called as a witness herein, having been first duly 20 sworn, was examined and testified as follows: 21 DIRECT EXAMINATION 22 BY MR. HERBERT: 23 Q. Good afternoon, sir. Would you please 24 introduce yourself?
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Page 109  1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24

Page 112

1 I was in charge of gang tactical unit in  
2 the First District, primarily working in the  
3 Harold Ickes Public Housing Projects, and I was  
4 there for three years or four years, I believe the  
5 last year I was there I transferred to the  
6 watch -- the second watch and worked as a patrol  
7 supervisor.  
8 At that point I transferred to the Fifth  
9 District and I worked there for four or five years  
10 as a patrol supervisor.

11 Q. Okay. And what were your duties as a  
12 patrol supervisor?

13 A. Well, you respond to in-progress calls,  
14 you conduct investigations of -- for discipline of  
15 police officers, and just make sure everything  
16 runs smoothly on the streets, make sure everybody  
17 is doing their job.

18 Q. Okay. And in your 22 years on the  
19 Chicago Police Department, were you ever subjected  
20 to drug tests?

21 A. Yes, several times.

22 Q. Okay. How many times, do you think?

23 A. Probably at least a dozen times.

24 Q. Okay.

1 Q. And how old are they?  
2 A. My oldest son is 20, and my second oldest  
3 son is 17, and my daughter is 13.  
4 Q. And are they in school now?  
5 A. Yes. My oldest just finished up at  
6 Moraine Valley for the year. My 17-year-old just  
7 finished Mount Carmel, he'll be a senior next  
8 year. My daughter is currently in the seventh  
9 grade.  
10 Q. The one that just finished up at Moraine  
11 Valley, where did he go to high school?  
12 A. He went to Mount Carmel High School.  
13 Q. Where do you live, what area of the city?  
14 A. I live in Beverly Hills on the  
15 South Side.  
16 Q. And are you familiar with that area?  
17 A. I grew up there. I've lived there my  
18 whole life.  
19 Q. And where did you go to high school?  
20 A. I went to Morgan Park High School.  
21 Q. Did you graduate from Morgan Park?  
22 A. Yes, I did.  
23 Q. When did you graduate?  
24 A. 1982.

Page 113

1 A. Maybe more.  
2 Q. Twelve or more?  
3 A. That would be my guess, yes.  
4 Q. Okay. And obviously there was a positive  
5 test for marijuana which is the reason that we are  
6 before the Board today, correct?

7 A. That is correct.

8 Q. And other than that positive test, the  
9 other tests that you have taken, have there ever  
10 been any positive tests in the past?

11 A. Never.

12 Q. Are you married?

13 A. Yes, I am.

14 Q. How long have you been married?

15 A. It will be 21 years next week.

16 Q. And your wife is here today, correct?

17 A. Yes, she is.

18 Q. And what is her name?

19 A. Jean Bennett.

20 Q. How do you spell Jean?

21 A. J-E-A-N.

22 Q. Okay. And do the two of you have any  
23 children?

24 A. We have three children.

1 Q. After high school what did you do? Did  
2 you go to college?  
3 A. Yes. I went to York Junior College in  
4 York, Nebraska. I had a baseball scholarship  
5 there. I stayed there for a year and then I  
6 transferred to Oklahoma Christian University in  
7 Oklahoma City, and played baseball there for three  
8 years.  
9 Q. Okay. I assume you played baseball in  
10 high school as well?  
11 A. Yes, I did. Football, also.  
12 Q. And you said you graduated from Oklahoma  
13 Christian University, correct?  
14 A. Right.  
15 Q. In 1987, is that what you said?  
16 A. Yes.  
17 Q. What was your degree in?  
18 A. I have a bachelor of science in business  
19 administration.  
20 Q. After college what did you do?  
21 A. I worked for a bank for a short period of  
22 time, a year or so, and then I took a job with  
23 Van Kampen Merritt, which is an investment banking  
24 firm, I worked there for two years, and then I

Page 116

Page 118

1 took a job with the Mercantile Exchange and I  
2 worked in S and P 500 pits and the Euro dollar  
3 pits.  
4 Q. In what year did you join the police  
5 department?  
6 A. **1991, May 22nd.**  
7 Q. Okay. And have you ever been disciplined  
8 by the police department during your 22 years as a  
9 police officer?  
10 A. **No, never been suspended or anything like**  
11 **that.**  
12 Q. And you've received numerous awards,  
13 isn't that true?  
14 A. **Yes, I did.**  
15 Q. Okay. And you've reviewed the  
16 complimentary history that was produced as a  
17 result in this case?  
18 A. **Right.**  
19 Q. Okay. And we are going to ask that this  
20 exhibit be entered into evidence at the conclusion  
21 of our case.  
22 Based on that, it indicates that you have  
23 67 total awards, isn't that correct?  
24 A. **Yes.**

1 Q. Have you ever intentionally ingested  
2 marijuana, such as putting it into food or  
3 anything along those lines?  
4 A. **No, sir.**  
5 Q. Have you ever been exposed to marijuana?  
6 A. **Numerous times.**  
7 Q. Okay. Describe your exposure to  
8 marijuana?  
9 A. **Well, on the police department we are**  
10 **exposed quite a bit going into people's homes or a**  
11 **lot of calls for kids in abandoned buildings, you**  
12 **show up, they are in the building smoking**  
13 **marijuana or conducting their illegal activities.**  
14 I also have a problem with my oldest son  
15 with marijuana usage.  
16 Q. Okay. And you were called down for a  
17 drug test in this case, correct?  
18 A. **Yes.**  
19 Q. And is that part of the random drug  
20 testing policy?  
21 A. **Yes.**  
22 Q. Okay. You weren't brought down for cause  
23 or anything along those lines, correct?  
24 A. **Not that I am aware of, no. I was told**

Page 117

Page 119

1 Q. Do you remember exactly what it says? If  
2 not, I can --  
3 A. **I don't remember exactly but I know that**  
4 **some awards are not on the electric printout that**  
5 **were done before we went to electronics system, so**  
6 **there actually should be more honorable mentions**  
7 **than what's on there.**  
8 Q. But you've reviewed --  
9 A. **I reviewed that, yes.**  
10 Q. And all those awards that are indicated  
11 on there, you won those awards, isn't that  
12 correct?  
13 A. **Yes.**  
14 Q. And you indicated there are some awards  
15 that you won that were not included on there?  
16 A. **When I was in the 21st District there was**  
17 **a problem with getting our awards posted downtown**  
18 **or whatever.**  
19 Q. Okay. Mr. Bennett, what brings us here  
20 today, obviously, is a positive test for the use  
21 of marijuana.  
22 My question to you is, have you ever  
23 used -- have you ever smoked marijuana?  
24 A. **No, I have not.**

1 **that it was a random drug test.**  
2 Q. And at some point you learned that there  
3 was a positive result in that test, correct?  
4 A. **That is correct.**  
5 Q. And what was your reaction when you  
6 learned that?  
7 A. **I was shocked.**  
8 Q. Why were you shocked?  
9 A. **Because I don't smoke marijuana.**  
10 Q. Okay. You provided a statement to the  
11 Internal Affairs agency regarding your positive  
12 test, correct?  
13 A. **Yes.**  
14 Q. And in there you discussed some exposures  
15 that you had with marijuana, correct?  
16 A. **That is correct, some recent ones before**  
17 **the positive test.**  
18 Q. Okay. And if you can describe for us --  
19 or first of all, strike that.  
20 What was your reason for providing these  
21 exposures to the Internal Affairs agency?  
22 A. **Just to prove my innocence, let them know**  
23 **that I had been exposed and maybe that that was**  
24 **what caused the positive test.**

Page 120

1 Q. Okay. And what exposures did you have  
2 prior to this test?  
3 A. Well, my son, the night before the test,  
4 he had two of his cousins over and they swam in  
5 the pool during the day, and at night I went to  
6 bed because I had to get up, I had to be at work  
7 at 5:00 in the morning, and during the night I got  
8 up to use the bathroom and that's when I smelled  
9 marijuana smoke. I went to the back of the house,  
10 the stairs are in the back of the house, I went to  
11 the back and I seen them getting in the pool, it's  
12 like 2:30, three o'clock in the morning.  
13 So I went down to my son's basement  
14 bedroom, which is below my bedroom, and opened the  
15 door, they had a towel rolled up that was --  
16 apparently they had it pushed up against the  
17 bottom of the door and there was marijuana smoke  
18 inside the room. I went into the room, looking  
19 around to see if I can find any evidence of it,  
20 and I found like a little tin foil cigar pack  
21 that -- I mean kids, they use that, they open up  
22 the cigars and put marijuana and smoke it, so I  
23 found the wrapper for that, but I didn't find any  
24 marijuana, or they must have brought it outside

Page 122

1 that was the only instance in which he had ever  
2 smoked marijuana in his room?  
3 A. No, it's not the first time. My wife  
4 told me that it happened before.  
5 Q. Okay. And where is your bedroom in  
6 relation to his bedroom?  
7 A. Directly above it.  
8 Q. Okay. And what type of house is it?  
9 A. It's a raised ranch.  
10 Now, he lives down -- his bedroom is down  
11 in the basement, which we recently refinished, we  
12 made a bedroom, a family room, everything. It's  
13 got a low ceiling.  
14 Q. Okay.  
15 A. But I mean that's his room.  
16 Q. Okay. And any other exposures that you  
17 were exposed to prior to this drug test?  
18 A. The end of June I went to a concert with  
19 my brother, him and his friends were going to a  
20 concert and somebody backed out, called me up, do  
21 you want to go, I said I will go with, we went up  
22 to the concert in Milwaukee, Wisconsin and there  
23 was a lot of marijuana smoking going on there.  
24 Q. Okay. How close was the smoking going on

Page 121

1 with them or whatever.  
2 Q. Did you go and confront your son at any  
3 point?  
4 A. I looked around for about 20 minutes or  
5 so, looking for stuff, and I went back upstairs  
6 and woke my wife up, told her what was going on.  
7 I don't really get along with the two  
8 nephews' mothers, there's been some family  
9 problems with that. So I woke her up and she said  
10 that she would handle it.  
11 Q. Okay. And which son was this? Is that  
12 the oldest son?  
13 A. My oldest son, James.  
14 Q. Okay. And was that the first time that  
15 you had ever caught your son smoking?  
16 A. That was the first time I actually caught  
17 him. I mean I suspected there was some problems  
18 because his grades were -- I mean he started  
19 drifting a little bit with his grades and quit  
20 playing football, quit place baseball, quit  
21 playing LaCrosse. So I thought something was the  
22 matter but that was the first time that I actually  
23 caught him smoking it.  
24 Q. And have you since learned whether or not

Page 123

1 in relation to you?  
2 A. I mean all around, the row in front of  
3 us, behind us, it was like quite a few people.  
4 Q. And who was playing?  
5 A. Government Mule.  
6 Q. Okay.  
7 A. I had never seen them before. My brother  
8 is a fan of theirs.  
9 Q. How long do you think that you were  
10 exposed to marijuana on that evening?  
11 A. Well, the concert went on for at least a  
12 couple of hours.  
13 Q. And approximately how many days was this  
14 prior to the drug test?  
15 A. Two weeks, maybe. Ten days, two weeks,  
16 something like that.  
17 Q. Okay. And any other exposures that you  
18 had?  
19 A. I responded to a request for a  
20 supervisor. A tactical unit in the Fifth  
21 District, they didn't have a -- their sergeant was  
22 unavailable, I responded on the radio, I said I  
23 would come over to 110th and Michigan, they were  
24 conducting a narcotics investigation at a tire

1 shop. 2 So it was raining, I showed up there, 3 went into the back of the building where they were 4 at, and they wanted a consent-to-search form 5 because the owner of the building had authorized 6 them to search but we have to document when we do 7 that type of thing. 8 So I didn't know that before I went over 9 there, I got over there, I said I don't have one 10 with me, I looked in my car, and they called their 11 lieutenant and he was en route bringing one. 12 Meanwhile, I asked them what was going 13 on. They said that they had observed some 14 individuals making hand-to-hand transactions in 15 the back of the tire shop, they approached for an 16 interview, they smelled strong smell of marijuana. 17 The owner came and asked him if they could search, 18 he said they could search, so that's why they 19 called for the consent to search. 20 Meanwhile, we are standing in the back 21 room where they were conducting their business and 22 there was marijuana smoke in the room back there. 23 Q. How long do you think you were exposed to 24 marijuana on that particular time?	1 inventoried, and it emits a strong smell of 2 marijuana to the point where we put like plastic 3 garbage bags over it, trying to knock the odor 4 down. 5 I hadn't really been the watch commander 6 much before that, but for a couple of weeks I was 7 because we were short, they changed the rule that 8 sergeants could work as a watch commander, so we 9 didn't have a lieutenant available and I was the 10 watch commander for several weeks prior to. I was 11 actually a watch commander the day I was called 12 down for the drug test. 13 Q. Okay. And after you had been informed 14 that the test resulted positive for marijuana, did 15 you take any steps to claim your innocence? 16 A. Yes, I did. I hired you first and then 17 after we gave the statement, I went to my doctor's 18 office and told him what had happened, and I asked 19 him about the medications I was taking, and he 20 says, well, you know, the medication -- he looked 21 it up on the Internet and said it could be a 22 false-positive. I said, well, I want to submit my 23 own urine test. 24 Q. And what medications were you taking at
1 A. Probably half an hour before I finally 2 left there. I mean I was there when they 3 searched, they found a bag of marijuana, package 4 of marijuana, and they found a pistol in the back 5 room. 6 Q. And when was that in relation to the drug 7 test? 8 A. Within a week or so before that occurred. 9 Q. Okay. Obviously when these charges were 10 filed, you had the ability -- or you've certainly 11 thought about possible explanations to this 12 positive test, correct? 13 A. Yes. 14 Q. And those exposures, are those part of 15 the reason that you believe may have caused a 16 positive test? 17 A. Yes, I believe that. 18 Q. Okay. And on the police department have 19 you been exposed to marijuana in any other ways? 20 A. Well, for like two or three weeks prior 21 to the positive test I was assigned as the watch 22 commander in the Fifth District and there's a 23 narcotic safe outside the watch commander's office 24 where they store the marijuana that's been	1 the time that you informed your doctor of? 2 A. I take a diuretic for border level high 3 blood pressure. I take Acetaminophen and 4 Ibuprofen, a sleeping little pack, I don't 5 remember what the name of it is, it's not like a 6 drug, it's some type of an herbal thing. 7 Q. And what is your doctor's name? 8 A. Dr. Eugene Muzykanski. 9 Q. And spell his last name, if you can? 10 A. M-U-Z-Y-K-A-N-S-K-I, I think it is, or 11 S-K-Y, maybe. 12 Q. And is this your primary care physician? 13 A. Yes, he is. 14 Q. Okay. And you've seen him in the past? 15 A. Several times. 16 Q. Okay. 17 A. I go for regular doctor's appointments. 18 Q. And when did you see him in relation to 19 when you found out that there was a positive test 20 for marijuana? How long after? 21 A. Like five or six days after. After I 22 went down to IAD and they, you know, told me that 23 I was going to be assigned to the call back unit. 24 Q. Okay. And why was it that you waited

Page 128

Page 130

1 five or six days to see the doctor? Was that your  
2 choice or was that because of the doctor's  
3 schedule?

4 **A. Well, I was busy trying to get an**  
5 **attorney. I probably wasn't really thinking**  
6 **clearly.**

7 Q. Okay. When you went down, you talked  
8 about how you wanted to take another drug test?

9 **A. That's what I told my doctor, and he said**  
10 **that he would write up an authorization for it.**

11 Q. And did you take another test then?

12 **A. He gave me the form, right outside his**  
13 **office is the Quest Diagnostics Laboratory,**  
14 **brought the form in there, went into the bathroom**  
15 **and gave them my urine sample.**

16 Q. You provided a urine sample?

17 **A. Correct.**

18 Q. Did you provide any other samples?

19 **A. On that date?**

20 Q. On any other date? On a different date?

21 **A. After a week or two, after I got the**  
22 **results from that, it was negative, I forwarded**  
23 **that to you and then I had talked, you know,**  
24 **people on the police department were calling me**

1 correct?

2 **A. That is correct.**

3 Q. And you indicated that you also provided  
4 another test?

5 **A. Yes, I did.**

6 Q. And what was that?

7 **A. I went to a laboratory that conducted a**  
8 **hair follicle testing, I went to the lab, they cut**  
9 **my hair and sent it off to the laboratory for**  
10 **testing, and that also came back negative.**

11 **MR. HERBERT:** And if I can mark as

12 Respondent's Exhibit Number 4.

13 (The document was marked as Respondent  
14 Exhibit Number 4 for identification.)

15 **BY MR. HERBERT:**

16 Q. First of all, before I get into this,  
17 explain how it is that you provided this hair  
18 sample?

19 **A. I went to the lab, told them that I**  
20 **wanted to have a drug test, a hair sample given,**  
21 **and they brought me into a room, the technician**  
22 **cut my hair, put it in an envelope, some rubber,**  
23 **sealed it up and sent it to the laboratory for**  
24 **testing.**

Page 129

Page 131

1 and telling me -- you know, I had a lot of people  
2 telling me what to do.

3 **MR. HERBERT:** If I could mark as Respondent's  
4 Exhibit A --

5 **HEARING OFFICER WALKER:** You already have a 1  
6 and a 2. So this would be 3.

7 **MR. HERBERT:** Thank you.

8 Respondent's 3.

9 (The document was marked as Respondent's  
10 Exhibit Number 3 for identification.)

11 **BY MR. HERBERT:**

12 Q. If I can show you what I am marking as  
13 Respondent's Exhibit Number 3.

14 **MR. POLK:** This says 1.

15 **MR. HERBERT:** You are right. I am changing it  
16 to 3.

17 **BY MR. HERBERT:**

18 Q. Do you see that document?

19 **A. Yes.**

20 Q. Okay. And is that the document that you  
21 previously described which indicated that it was  
22 negative for marijuana?

23 **A. Yes.**

24 Q. Okay. And that is the urine sample,

1 Q. Now, you received the results of the hair  
2 test?

3 **A. Yes, about a week later they called me**  
4 **and told me.**

5 Q. If I can show you what's marked as  
6 Respondent's Exhibit Number 4.

7 **HEARING OFFICER WALKER:** And what is that,  
8 Counsel?

9 **MR. HERBERT:** I am sorry, this is the result  
10 for the hair sample.

11 **HEARING OFFICER WALKER:** Okay.

12 **MR. HERBERT:** And I am going to give you  
13 copies of all these. I don't have them laid out  
14 neatly.

15 **BY MR. HERBERT:**

16 Q. Can you identify that document, please?

17 **A. This is a Quest Laboratory hair sample**  
18 **result.**

19 Q. Okay. And what is the result for  
20 marijuana?

21 **A. Negative.**

22 Q. Negative for any other drugs as well?

23 **A. Negative for all the drugs tested.**

24 Q. Okay. Thank you.

1 **MR. HERBERT:** I have nothing further.  
2 **HEARING OFFICER WALKER:** Cross-examination?  
3 **MR. POLK:** Yes.  
4 **CROSS-EXAMINATION**  
5 **BY MR. POLK:**  
6 Q. Good afternoon, Sergeant Bennett.  
7 **A. Good afternoon.**  
8 Q. You just talked about each of the four  
9 exposures to marijuana, environmental exposures  
10 that you provided to Internal Affairs, correct?  
11 **A. Yes.**  
12 Q. And the first one you talked about was  
13 your son's room?  
14 **A. Yes.**  
15 Q. And that was -- was that at 2:30 in the  
16 morning on July 10th, 2012, approximately?  
17 **A. Yes.**  
18 Q. You testified that you went into the  
19 basement bedroom of your oldest son, is that  
20 correct?  
21 **A. Yes, I did.**  
22 Q. And you said you saw smoke in the room,  
23 correct?  
24 **A. Right.**

1 trying to pin down what he said to Internal  
2 Affairs.  
3 **HEARING OFFICER WALKER:** Okay. So, yes, you  
4 are attempting to impeach, but you are going to  
5 have to mention the statement, when it was taken,  
6 show the statement to the witness and let counsel  
7 know where in the statement you are referring to.  
8 So the objection is sustained but you can cure all  
9 that.  
10 **MR. POLK:** One moment, please.  
11 **HEARING OFFICER WALKER:** So we are going to  
12 need to mark that.  
13 **MR. POLK:** Sure.  
14 **HEARING OFFICER WALKER:** Exhibit Number 5.  
15 (The document was marked as Superintendent  
16 Exhibit Number 5 for identification.)  
17 **HEARING OFFICER WALKER:** Is that a statement  
18 to IAD, did you say?  
19 **MR. POLK:** Yes.  
20 **BY MR. POLK:**  
21 Q. Can you please identify the document that  
22 I just handed you?  
23 **A. Pardon me?**  
24 Q. Can you please identify the document I

1 Q. Did you report that you saw marijuana  
2 smoke to Internal Affairs?  
3 **A. I told them that there's strong smell of**  
4 **marijuana.**  
5 Q. So did you report that there was a strong  
6 smell of marijuana but did you not report that you  
7 saw marijuana smoke?  
8 **MR. HERBERT:** I just object. It's a compound  
9 question.  
10 **HEARING OFFICER WALKER:** Yes. Why don't you  
11 split those questions up because I am having a  
12 little difficulty following you as well.  
13 **BY MR. POLK:**  
14 Q. Didn't you report to Internal Affairs  
15 only that you smelled marijuana -- a strong smell  
16 of marijuana in the room, correct?  
17 **A. Correct.**  
18 Q. Did you not report to Internal Affairs  
19 that you saw smoke in the room?  
20 **MR. HERBERT:** I would object. It's not  
21 impeaching.  
22 **HEARING OFFICER WALKER:** Is that the purpose  
23 of your question?  
24 **MR. POLK:** It is an inconsistent -- I am

1 just handed you?  
2 **A. This is my Internal Affairs statement.**  
3 Q. Is this a true and accurate copy of the  
4 Internal Affairs statement that you provided on  
5 July 17th, 2012?  
6 **A. July 16th.**  
7 Q. Okay, sorry.  
8 The report is dated July 17th but you  
9 gave the statement at 11:55 on July 16th, 2012?  
10 **A. Correct.**  
11 **MR. HERBERT:** And I would just -- it's a minor  
12 objection but the report has two dates in it.  
13 There's a date below that talks about July 16th.  
14 **MR. POLK:** On each page in the upper  
15 right-hand corner it says July 17th, 2012. Sorry.  
16 **BY MR. POLK:**  
17 Q. And when you gave the statement were you  
18 represented by your attorney?  
19 **A. Yes, I was.**  
20 Q. Were you informed that you were required  
21 to give truthful answers?  
22 **A. I was required to give what?**  
23 Q. That you were required to give truthful  
24 answers?

1 A. Yes.  
2 Q. That providing a false report could  
3 result in being separated from the Chicago Police  
4 Department?

5 A. Right.

6 Q. On Page -- please turn to Page 8.

7 A. Okay.

8 Q. On that day were you asked the question:  
9 "I am now showing you a copy of the lab  
10 results from Quest Diagnostics for your specimen  
11 RT123802A which tested positive for marijuana  
12 metabolites. How do you explain the presence of  
13 the marijuana in your urine specimen?"

14 A. Okay.

15 Q. And did you give the answer:  
16 "I will just go for the first scenario I  
17 described, I can't explain how that would happen,  
18 there has to be a mistake. Since being presented  
19 with this information I've racked my brain trying  
20 to think of how this could happen. I've thought  
21 of several situations which could have possibly  
22 caused a positive test. The first situation would  
23 have been on 10 July, '12, at approximately 0230  
24 hours. My son had his two cousins over to spend

1 HEARING OFFICER WALKER: Additionally,  
2 Mr. Herbert, I don't necessarily see an  
3 inconsistency with what is here and what the  
4 witness testified to.

5 MR. POLK: The witness testified that he saw  
6 smoke in the room and that is not in his  
7 statement.

8 MR. HERBERT: And I would just argue again  
9 that it's not an impeaching point.

10 HEARING OFFICER WALKER: All right. So I am  
11 going to overrule the objection but you have an  
12 opportunity to come back in your redirect and  
13 rehabilitate.

14 You may answer the question --

15 THE WITNESS: Can you say the question again?

16 HEARING OFFICER WALKER: -- if you recall.  
17 BY MR. POLK:

18 Q. Didn't you fail to report to IAD that you  
19 saw smoke in the room?

20 MR. HERBERT: I am going to object to the form  
21 of the question. "Failed to report," it assumes a  
22 legal conclusion.

23 HEARING OFFICER WALKER: I don't know that  
24 this is a significant enough point that we are

1 the night. I smelled what I thought to be  
2 marijuana coming from his bedroom. I went down to  
3 the bedroom. The bedroom door was closed. They  
4 weren't in there, they were in the pool, but there  
5 was a strong smell of marijuana in the room. I  
6 looked through the room to see if I could find any  
7 evidence of marijuana. After several minutes, I  
8 went back upstairs and informed my wife of the  
9 situation. She told me that she would handle this  
10 issue with my son."

11 Did you give that answer?

12 A. Yes.

13 Q. Does it say anywhere in this answer that  
14 you saw smoke in the room?

15 MR. HERBERT: And again, I would renew my  
16 objection that it's not impeaching.

17 HEARING OFFICER WALKER: And why are you

18 saying it's not impeaching, Mr. Herbert?

19 MR. HERBERT: Well, first of all, I am not  
20 clear -- well, I guess I will assume that he's  
21 impeaching. The fact that it does not include the  
22 language "smelling smoke in the air," I would say  
23 that that doesn't -- that alone does not impeach  
24 his testimony today. It's kind of innocuous.

1 spending this much time on it. I am going to  
2 sustain the objection.

3 BY MR. POLK:

4 Q. In your response didn't you not say that  
5 there was smoke in the room?

6 A. Did I not say they were smoking?

7 Q. Yes.

8 A. No, I did not say that there was smoke in  
9 the room. I smelled strong smell of marijuana in  
10 the room.

11 Q. In your response, didn't you not say that  
12 you found tin foil cigarettes that you inferred  
13 were for smoking marijuana?

14 MR. HERBERT: Again, same objection.

15 HEARING OFFICER WALKER: Sustained. You are  
16 just going to have to face it. Sustained.

17 BY MR. POLK:

18 Q. Can you please describe the size of your  
19 son's basement room where you encountered this  
20 smell of marijuana?

21 A. It's probably about, maybe, 10 foot by 12  
22 foot with maybe six foot, six inch ceiling. It's  
23 got one glass block window.

24 Q. Is there any ventilation in that room?

Page 140

Page 142

1 A. Just the air-conditioning or heating  
2 ducts, and there's a small, little flap-like  
3 window in the glass block window, it's probably  
4 about this big.

5 Q. Was the air-condition turned on on  
6 July 10th of 2012?

7 A. Was the air-conditioning on?

8 Q. Yes.

9 A. It was in July, it might have been. I am  
10 not positive.

11 Q. Did you ever have marijuana directly  
12 blown on you when you were in the basement on that  
13 day?

14 MR. HERBERT: Objection to form. It's vague.

15 HEARING OFFICER WALKER: Overruled.

16 BY THE WITNESS:

17 A. Did I have marijuana blown on me?

18 BY MR. POLK:

19 Q. Yes.

20 A. By somebody?

21 Q. Yes.

22 A. No. There was nobody down there.

23 Q. Did you directly observe anyone smoking  
24 marijuana?

1 probably.

2 Q. And for how much of that portion were you  
3 smelling marijuana?

4 A. Throughout the whole concert.

5 Q. Did you have marijuana directly blown on  
6 you at the concert?

7 A. Well, it was blown in my direction, I am  
8 sure, I mean there's people behind me smoking it,  
9 people in front. There was a lot of people  
10 smoking marijuana there.

11 Q. Was it blown directly on you?

12 MR. HERBERT: Objection, asked and answered.

13 HEARING OFFICER WALKER: Sustained.

14 BY MR. POLK:

15 Q. Now, moving on to when you were called  
16 into the tire shop in late June, you testified  
17 that you saw smoke there?

18 A. I said there was strong smell of  
19 marijuana.

20 Q. So are you saying that you did not see  
21 smoke at the tire shop?

22 A. Well, the room was smoky, I could see the  
23 smoke in it, but I stayed at the -- I smelled  
24 marijuana.

Page 141

Page 143

1 A. Did I observe my son smoking marijuana?

2 Q. Anyone?

3 A. No.

4 Q. How long were you in the basement bedroom  
5 total that day?

6 A. Probably 20, 30 minutes at the most.

7 Q. Moving on to the concert, the Government  
8 Mule concert, when did you say you attended that  
9 concert?

10 A. It was late June, I believe, like  
11 June 27th or something like that.

12 Q. And you testified that you saw smoke  
13 there?

14 A. Oh, yeah.

15 Q. What was the concert venue?

16 A. It was an outdoor concert venue. I am  
17 not sure what the name of the place was.

18 Q. So it was open to the air outside?

19 A. Correct.

20 Q. And you said you were at the concert for  
21 approximately two hours?

22 A. That is correct.

23 Q. And --

24 A. Well, a little bit more than two hours,

1 Q. When you were asked the question that I  
2 previously read by Internal Affairs on July 16th,  
3 2012, as regarding the tire shop, did you give the  
4 answer on Page 9 of that statement?

5 A. Yes.

6 Q. "The third situation was that I responded  
7 to a request for a supervisor call at  
8 approximately 110th and Michigan at a tire shop in  
9 late June 2012. There's a very strong smell of  
10 marijuana in the shop while I was present. I  
11 don't have the RD number with me but I can provide  
12 it if necessary. Arrests were made, and a weapon  
13 and marijuana were recovered at that location."

14 A. Yes.

15 Q. Did you say in your statement that you  
16 saw marijuana smoke?

17 MR. HERBERT: Objection, not impeaching.

18 HEARING OFFICER WALKER: And the testimony,  
19 Mr. Herbert, that the witness gave, did he say he  
20 smelled -- that he saw smoke around him?

21 MR. HERBERT: He said that after counsel asked  
22 him did you see smoke. In order to be impeaching,  
23 obviously it has to be the same question with  
24 inconsistent answers.

1 MR. POLK: On his direct examination --  
2 HEARING OFFICER WALKER: Sustained. You are  
3 going to have to do it a different way. You can't  
4 ask him and then --  
5 MR. POLK: He said on his direct examination  
6 that he saw marijuana smoke in the room, when he  
7 was describing the situation, which was the same  
8 question that he was asked -- in his Internal  
9 Affairs, he was asked to describe the situation,  
10 and on his direct examination he said he saw smoke  
11 and when he was giving his statement to Internal  
12 Affairs he did not say that he saw smoke.  
13 MR. HERBERT: Maybe he did, I am not sure.  
14 HEARING OFFICER WALKER: I don't recall him  
15 saying he actually saw the smoke at the drug bust.  
16 But, yes, it's an insignificant point in terms of  
17 an impeachment attempt. So the objection will be  
18 sustained.  
19 BY MR. POLK:  
20 Q. And approximately what were the  
21 dimensions of the tire shop where you smelled the  
22 marijuana?  
23 A. The tire shop itself was -- it's a pretty  
24 big place but there's like a room in the back,

1 A. That is correct.  
2 Q. And you said you smelled an odor of  
3 marijuana?  
4 A. Yes.  
5 Q. Was the marijuana burning in the safe?  
6 A. No.  
7 Q. What was -- in what state was the  
8 marijuana?  
9 A. It's -- when you recover marijuana, you  
10 put it -- whatever packaging it's in, you put it  
11 in a bag, seal the bag, and put it in the safe.  
12 Q. So the marijuana was in a sealed bag in a  
13 safe?  
14 A. Correct.  
15 Q. Was the safe closed?  
16 A. Well, there's like a trap -- like a trap  
17 door on top of it with the cylinder, you put the  
18 marijuana in there, you turn the cylinder, and  
19 then it drops down into the safe. So you can't  
20 reach into the safe and take anything out of the  
21 safe once it's been dropped into the safe.  
22 Q. So was the marijuana within a bag sealed  
23 within the safe?  
24 A. Right.

1 like a little storage room, whatever, that's where  
2 they were apparently smoking the marijuana in  
3 there. It was a long narrow room, probably about  
4 15 feet long by about four foot wide, maybe.  
5 Q. And how tall?  
6 A. I don't know, probably eight feet,  
7 something like that.  
8 Q. Pardon me?  
9 A. Eight feet, maybe.  
10 Q. And did you have marijuana blown into  
11 your face on that occasion?  
12 A. No.  
13 Q. And what was the ventilation of that  
14 room?  
15 A. Well, I don't believe there was any  
16 ventilation in that room. It's within the tire  
17 shop.  
18 Q. And finally, you testified about  
19 supervising outside of the narcotics safe in the  
20 Fifth District, is that correct?  
21 A. Yes.  
22 Q. And you said you were there -- was it for  
23 two to three weeks as watch commander, is that  
24 correct?

1 Q. And approximately how far was the safe  
2 from you at your desk?  
3 A. Probably eight feet, maybe, away, 10 feet  
4 maybe at the most. It's right outside the watch  
5 commander's door.  
6 Q. And how big is the room where your desk  
7 and the safe were situated?  
8 A. The watch commander's office?  
9 Q. Yes.  
10 A. Probably, I don't know, 15 feet by  
11 12 feet or something.  
12 Q. And how tall?  
13 A. Eight feet, maybe, nine feet. I don't  
14 know. I am not sure.  
15 Q. You also testified that you followed up  
16 with your primary care physician after you  
17 received this positive test, is that correct?  
18 A. Correct.  
19 Q. And you testified that he said your  
20 medications could have provided a false-positive,  
21 is that correct?  
22 A. That's what he thought. He looked up on  
23 the Internet and was trying to find an explanation  
24 for how it could happen.

Page 148

Page 150

1 Q. Did you provide the Chicago Police  
2 Department with any statement from your doctor  
3 saying that your medications could have caused a  
4 false-positive?  
5 A. **No, I don't believe I did.**  
6 Q. You also testified that you subsequently  
7 had a urine test performed, is that correct?  
8 A. **That is correct.**  
9 Q. Was that on July 16th, 2012?  
10 A. **Yes, it was.**  
11 Q. And you had a hair test performed, also?  
12 A. **That is correct.**  
13 Q. And was that on August 22nd, 2012?  
14 A. **I believe so. It was sometime in August,**  
15 **right.**  
16 **MR. HERBERT:** No, it was the 21st, just to be  
17 clear.  
18 **HEARING OFFICER WALKER:** What was the date of  
19 the urine test?  
20 **MR. POLK:** July 16th, 2012.  
21 **BY MR. POLK:**  
22 Q. You testified that you gave hair for the  
23 hair test?  
24 A. **Pardon me?**

Page 149

Page 151

1 Q. You gave a hair sample for the hair test?  
2 A. **Yes, I did.**  
3 Q. Approximately how long was your hair that  
4 you provided?  
5 A. **Three inches long, maybe.**  
6 Q. Did you have to pay to have your urine  
7 test and hair test performed?  
8 A. **Yes, I did.**  
9 Q. Were you provided with the opportunity to  
10 have your B bottle tested from your Chicago Police  
11 Department urine test?  
12 A. **Yes.**  
13 Q. Why didn't you have that test performed?  
14 A. **I didn't see the necessity in having it**  
15 **tested.**  
16 Q. So you didn't see the necessity in having  
17 the positive test result retested?  
18 A. **Right.**  
19 **MR. POLK:** No further questions.  
20 **HEARING OFFICER WALKER:** Redirect?  
21 **REDIRECT EXAMINATION**  
22 **BY MR. HERBERT:**  
23 Q. With regard to that B vial, that would  
24 have been tested at the same place that produced

1 the positive result, correct?  
2 A. **I assume so, yeah.**  
3 Q. And that's Quest, correct?  
4 A. **Right.**  
5 Q. And that's the same lab that tested your  
6 independent urine sample as well as your hair  
7 sample, correct?  
8 A. **That is correct.**  
9 Q. And if you had the B vial tested, would  
10 the police department have paid for that test or  
11 would it have been your responsibility?  
12 A. **It would have been my responsibility.**  
13 **MR. HERBERT:** Nothing further.  
14 **HEARING OFFICER WALKER:** Any further cross?  
15 **MR. POLK:** Yes.  
16 **RECROSS-EXAMINATION**  
17 **BY MR. POLK:**  
18 Q. So you believe that it would have been  
19 the same lab that had performed the test on the  
20 B bottle, correct?  
21 A. **I assume so.**  
22 Q. But you don't know for a fact?  
23 A. **I don't know for a fact.**  
24 Q. And you just said that you would have to

Page 152

- 1 A. Jean Bennett. B-E-N-N-E-T-T.  
2 Q. And how do you spell your first name?  
3 A. J-E-A-N.  
4 Q. And, Miss Bennett, you are married to my  
5 client, isn't that correct?  
6 A. Uh-huh.  
7 Q. You have to say yes.  
8 A. Yes.  
9 Q. Okay. How long have the two of you been  
10 married?  
11 A. Twenty-two years next week.  
12 Q. And you are aware of the fact that there  
13 was a positive drug test for marijuana in a sample  
14 that was provided by Duane, isn't that correct?  
15 A. Yes.  
16 Q. What was your reaction when you learned  
17 that there was a positive drug test for Duane for  
18 marijuana?  
19 A. Disbelief.  
20 Q. Okay. Why?  
21 A. Because he never has, never would. He  
22 just wouldn't.  
23 Q. And when you say "he never has, never  
24 would," what do you mean?

Page 154

- 1 was using marijuana?  
2 A. Absolutely. I mean he's home every  
3 night, we are home every night together, he  
4 doesn't go out, I don't go out, we are homebodies.  
5 Yes, I would know. I know my husband.  
6 Q. And do you work?  
7 A. Yes.  
8 Q. Where do you work?  
9 A. At a children's clothing store.  
10 Q. Okay. Where else have you been employed  
11 other than that?  
12 A. I worked for the FBI, that's when I met  
13 Duane. I was working for the FBI, when we had our  
14 first child I quit and stayed home to raise kids.  
15 Q. Okay. And how long did you work for the  
16 FBI?  
17 A. Like 12 years.  
18 Q. And how long have you been employed at  
19 the clothing store?  
20 A. About a year.  
21 Q. And as far as Duane in the community, is  
22 he active in the community at all?  
23 A. Yes, he always has been with the kids  
24 with their sports, he's coached the kids, all

Page 153

- 1 A. Smoke marijuana or any drugs.  
2 Q. How long have you known Duane?  
3 A. About 25 years. I met him when he was in  
4 the academy.  
5 Q. Have you ever known Duane to smoke  
6 marijuana?  
7 A. Never.  
8 Q. How would you characterize the amount of  
9 time that the two of you spend together during the  
10 last year or so -- strike that, it's a poor  
11 question.  
12 The two of you live in the same house,  
13 correct?  
14 A. Yes.  
15 Q. Sleep in the same bedroom?  
16 A. Yes.  
17 Q. And you've never known Duane to use  
18 marijuana at any point, certainly not within that  
19 last year, correct?  
20 A. No, never.  
21 MR. POLK: Objection, leading.  
22 HEARING OFFICER WALKER: Overruled.  
23 BY MR. HERBERT:  
24 Q. Do you think that you would know if Duane

Page 155

- 1 three of our kids.  
2 Q. And were these volunteer positions?  
3 A. Yes.  
4 Q. And how would you characterize Duane as a  
5 father?  
6 A. Excellent.  
7 Q. What makes him an excellent father?  
8 A. He's always been there for them, loving,  
9 good dad.  
10 Q. I am sorry?  
11 A. A good dad.  
12 Q. And how about as a husband, how would you  
13 characterize him as a husband?  
14 A. Very good.  
15 Q. What type of character do you believe  
16 Duane has?  
17 A. Excellent, upstanding. I mean he always  
18 has been. Always -- on the police department,  
19 he's always been, you know, gone above and beyond.  
20 He's always come home with stories for the kids.  
21 He buys candy for the poor kids and hands it out  
22 to them.  
23 Q. And how about his reputation in the  
24 neighborhood, what's his reputation like among the

1 neighbors?  
2 A. Excellent. Everybody loves him. He can  
3 talk to anybody. Nobody can say a bad word about  
4 him.  
5 Q. Have you since discovered that marijuana  
6 has been used in your house?  
7 A. Yes.  
8 Q. Describe -- you are aware of the fact  
9 that Duane -- Duane has indicated that he walked  
10 into a room after his son -- your son and a couple  
11 of the cousins were in there and he smelled  
12 marijuana. You are aware of that fact, correct?  
13 A. Yes.  
14 Q. Do you remember that incident?  
15 A. Yes.  
16 Q. Can you tell us what happened?  
17 A. I think he got up to go to the bathroom  
18 and, you know, I can hear him obviously get up and  
19 go, and then he was gone for a while, I know he  
20 had gone downstairs, and then I got up to see  
21 where he was, and the kids were out in the pool  
22 and he was down in my son's bedroom.  
23 Q. And did he believe that your son was  
24 smoking marijuana?

1 A. Yes.  
2 Q. Do you know if that's the only time that  
3 your son has smoked marijuana in the house?  
4 A. No. No. He's done it several times.  
5 Q. Okay.  
6 A. He just won't not do it. We've -- you  
7 know, I mean we are having trouble with him.  
8 Q. Okay. And when did you discover that  
9 that wasn't the first time that he smoked  
10 marijuana in the house?  
11 A. When did I discover?  
12 Q. Yes.  
13 A. Oh, probably a couple years ago.  
14 Q. Do you know if Duane knew about your son  
15 smoking marijuana in the house prior to that  
16 evening?  
17 A. Not -- I mean I kept it from him. I mean  
18 I knew it but I think he might have smelled it on  
19 occasion and thought but had never caught him.  
20 Q. Okay. Between your son's bedroom -- it's  
21 in the basement, correct?  
22 A. Correct.  
23 Q. And there's an air vent in between your  
24 room and your son's room, correct?

1 A. Yes.  
2 Q. And what happened after that, did you end  
3 up talking to your son?  
4 A. Yes. Yes. He went to -- I just told him  
5 that I would handle it, the kids were out in the  
6 pool, he had to get up and go to work.  
7 Q. And did you then speak to your son?  
8 A. Yes.  
9 Q. And did you find out if he and his  
10 cousins were smoking marijuana?  
11 A. They were denying it but I knew they  
12 were. I mean I can smell it.  
13 Q. How would you characterize the smell --  
14 strike that.  
15 Did you go into the bedroom -- his  
16 bedroom, your son's?  
17 A. Yes.  
18 Q. And how would you characterize the smell?  
19 Strong?  
20 A. Yes, very strong.  
21 Q. Okay.  
22 A. Without a doubt I knew what it was.  
23 Q. And had Duane already been in the room at  
24 the point that you went into the bedroom?

1 A. Right.  
2 Q. Okay.  
3 A. I mean I can hear them talking down  
4 there. He's right below us.  
5 Q. Okay. Do you have any idea how many  
6 times he smoked marijuana in that bedroom prior to  
7 this night that you've testified to?  
8 A. You know, a lot. I mean I don't know how  
9 many times but I've found things. I found toilet  
10 paper, the roll, the empty roll, and I guess they  
11 put paper towels in it, or whatever, to hide the  
12 smell. I've found things in his room.  
13 MR. HERBERT: Okay. I have nothing further.  
14 He may have some cross.  
15 HEARING OFFICER WALKER: Cross?  
16 MR. POLK: Very briefly.  
17 CROSS-EXAMINATION  
18 BY MR. POLK:  
19 Q. You just testified that as far as you  
20 remember, Sergeant Bennett, your husband, woke up  
21 to go to the bathroom late at night that evening,  
22 correct?  
23 A. (No audible response.)  
24 MR. HERBERT: You have to say yes.

1 **BY THE WITNESS:**

2 A. Yes. Sorry.

3 **BY MR. POLK:**

4 Q. And then at some point after that he  
5 informed you that your son was smoking marijuana  
6 in his bedroom basement, correct?

7 A. Correct.

8 Q. Do you know approximately how long your  
9 husband was in your son's bedroom between  
10 detecting the odor and informing you?

11 A. Twenty minutes, half an hour. I didn't  
12 know where he was. He goes down in the bathroom  
13 in the basement, that's like his bathroom, so I  
14 thought that's what he was doing down there.

15 Q. And you testified that you knew about  
16 your son's marijuana use before your husband did,  
17 correct?

18 A. Correct.

19 Q. So it had been happening at least for a  
20 while in your household before Sergeant Bennett  
21 knew that it was occurring?

22 A. Yes.

23 Q. So to the best of your knowledge, had  
24 Sergeant Bennett been exposed to the odor or smoke

1 I will inform the hearing officer, and

2 Mr. Polk will explain, but we had attempted to  
3 work out a stipulation to the foundation to these  
4 reports and I believe the City is offering a  
5 partial stipulation, just to inform the hearing  
6 officer.

7 **HEARING OFFICER WALKER:** All right. We should  
8 probably deal with the stipulation first and then  
9 let me see what document is being offered into  
10 evidence and whether or not there are any  
11 objections to that.

12 **MR. HERBERT:** Okay. I will explain.

13 **HEARING OFFICER WALKER:** So let's deal with  
14 Exhibit 3 first.

15 **MR. HERBERT:** Okay.

16 **HEARING OFFICER WALKER:** Would the stipulation  
17 have any bearing on Number 3?

18 **MR. POLK:** Yes. We would object as to the  
19 foundation of Exhibits 3 and 4.

20 **HEARING OFFICER WALKER:** Oh, okay. So there  
21 is no stipulation?

22 **MR. POLK:** We -- as Mr. Herbert just  
23 discussed, we have been in communication and he  
24 has requested that the city stipulate, and the

1 of marijuana prior to July 10, 2012?

2 A. I am sure if he was down in his room  
3 smoking it, it would come up the vents. I mean  
4 I've smelled it in my room. So I am sure he's  
5 been in contact with it.

6 Q. But you just testified that he did not  
7 know about it before that night, correct?

8 A. Well, but he would be sleeping. I mean  
9 it would be in the middle of the night.

10 **MR. POLK:** Thank you. Nothing further.

11 **MR. HERBERT:** Nothing else.

12 **HEARING OFFICER WALKER:** Anything else?

13 **MR. HERBERT:** No.

14 **HEARING OFFICER WALKER:** Thank you, ma'am.  
15 Don't forget your microphone.

16 (Witness excused.)

17 **HEARING OFFICER WALKER:** Any further  
18 witnesses?

19 **MR. HERBERT:** No further witnesses.

20 **HEARING OFFICER WALKER:** Okay.

21 **MR. HERBERT:** I would just -- at this point I  
22 would like to introduce the lab results that were  
23 identified as Respondent Exhibit Number 3 and  
24 Respondent Exhibit Number 4.

1 city continued to request additional documentation  
2 about these two tests that were performed.

3 Yesterday, Mr. Herbert provided  
4 additional documentation. So as a result of that  
5 documentation, the city is willing to stipulate  
6 that these documents on their face show that a  
7 urine test was performed and those are the  
8 results, and the hair test was performed and those  
9 are the results, but we do not agree to stipulate  
10 to the collection of the samples and the chain of  
11 custody.

12 As you know, the documentation that the  
13 city provides with this drug test includes an  
14 affidavit from the collector. This documentation  
15 doesn't have anything like that. It doesn't have  
16 any information about testing for dilution or  
17 adulterants in the samples. There's no  
18 information from -- of any review by certifying  
19 scientists that the chain of custody was intact.  
20 And particularly, the urine test does not even  
21 show any of the thresholds for positive or  
22 negative tests. It just says negative for each of  
23 the drugs that were tested for.  
24 Similarly, for the hair test, Exhibit 4,

Page 164

Page 166

1 there's no information about the chain of custody  
2 or the collection, and there's no information  
3 about the hair other than the fact that it was  
4 collected from his head. Nothing about the hair  
5 length or if it was treated in any way.

6 **HEARING OFFICER WALKER:** All right. Well,  
7 let's deal with this one step at a time.  
8 First of all, I do not have a copy of 3  
9 or 4, Exhibit Numbers 3 or 4.

10 **THE VIDEOGRAPHER:** Going off the record. I  
11 just have to change tape.

12 **HEARING OFFICER WALKER:** Oh, all right.  
13 (Pause.)

14 **THE VIDEOGRAPHER:** Proceed.

15 **HEARING OFFICER WALKER:** Okay.

16 **MR. HERBERT:** Madam Hearing Officer --

17 **HEARING OFFICER WALKER:** Yes.

18 **MR. HERBERT:** -- I tendered you Respondent's  
19 Exhibits 3 and 4. Just as a way of introduction,  
20 I attempted to get everything to establish the  
21 chain in this case, and what has been reported to  
22 me is that I have every document that is necessary  
23 and every document in existence to establish this  
24 chain.

1 **HEARING OFFICER WALKER:** Well, first of all,  
2 it appears to me -- you passed up to me it looks  
3 like five sheets of papers as Exhibit 3, and the  
4 first three -- I mean there's even health  
5 insurance information here that I wouldn't need.

6 **MR. HERBERT:** Right.

7 **HEARING OFFICER WALKER:** And --

8 **MR. HERBERT:** Perhaps I can redact some of  
9 that information.

10 **HEARING OFFICER WALKER:** Yes. You know, just  
11 bring it down to -- okay.

12 So the collection date is on this one,  
13 there are no results on this page, and then this  
14 first page again is insurance information.

15 **MR. HERBERT:** I believe it provides just the  
16 date in which he went down there.

17 **HEARING OFFICER WALKER:** Yes, his name,  
18 perhaps, and the date, but that's also on the two  
19 sheets that actually say what the results are.

20 **MR. HERBERT:** And I agree, I was just -- in  
21 light of the objection -- or the refusal to  
22 stipulate, I was trying to include as many  
23 documents as possible to come to an agreement, but  
24 I agree that not all of those documents are

Page 165

Page 167

1 Specifically, I asked the individuals  
2 about how it does not -- it's not as detailed as  
3 the chain of custody that the city provided in  
4 Mr. Bennett's sample, and it was told to me that  
5 there is -- there will never be a chain that  
6 detailed unless it's done by law enforcement.  
7 But nonetheless, you can see in those  
8 Respondent exhibits it talks about the specific  
9 times of the collection, there's signatures there,  
10 there's the label that's indicated on there,  
11 there's indications that the vial was sealed and  
12 it was sealed when it was received by Quest, and I  
13 would state that it establishes all the foundation  
14 necessary for a stipulation.

15 Obviously, if the city requires us to  
16 bring in human testimony for this, and the hearing  
17 officer agrees that that's necessary, then I would  
18 ask for an additional date, but I would just state  
19 that we stipulated to the result in their case,  
20 and I think typically at the Police Board and  
21 administrative hearings in general and also in  
22 courtrooms, there's generally a stipulation to a  
23 chain, and I would respectfully request that those  
24 exhibits be entered into evidence.

1 necessary. Certainly all we want is the negative  
2 results in evidence.

3 **HEARING OFFICER WALKER:** All right. And then  
4 the second page seems to have the same information  
5 that the second offer -- two pages have results,  
6 both of them seem to have the same information.

7 **MR. HERBERT:** They do. It's just a different  
8 way of -- the alternate one was provided to me  
9 when I requested additional documents to satisfy  
10 the chain. So again, I don't -- I don't believe  
11 that both are necessary, but I was just trying to  
12 provide everything.

13 **HEARING OFFICER WALKER:** So having that and  
14 the possibility that these documents can be pared  
15 down to what's important, I now have to deal with  
16 your -- what you determine as your partial  
17 stipulation. Usually I would like to have  
18 stipulations in writing, as we talked about  
19 before, so I can kind of read just what it is that  
20 you are stipulating to, but if I am following you,  
21 and I am just dealing with 3 right now, the  
22 Department is stipulating that these are results?

23 **MR. POLK:** Yes.

24 **HEARING OFFICER WALKER:** And that these

Page 168

1 results do belong to Mr. Bennett?  
2 **MR. POLK:** We have not stipulated that they  
3 belong to Mr. Bennett.  
4 **HEARING OFFICER WALKER:** Okay. Just tell me  
5 again what it is that you are stipulating to.  
6 **MR. POLK:** That this is a printout of a  
7 negative test result from Quest Diagnostics.  
8 **HEARING OFFICER WALKER:** All right. You are  
9 not even stipulating as to who it belongs to?  
10 **MR. POLK:** As I said, we don't have enough  
11 information about the collection and the chain of  
12 custody so we cannot stipulate that it is  
13 specifically from a sample brought in by  
14 Sergeant Bennett.  
15 **HEARING OFFICER WALKER:** Okay. So it doesn't  
16 seem to me that we, in essence, have a  
17 stipulation, because I mean you are stipulating  
18 that this paper says negative all the way down.  
19 So that's not really giving us anything in terms  
20 of -- so my conclusion will be that there's just  
21 really no stipulation.  
22 So is there -- is there an objection to  
23 the entry of Respondent's 3? And I am looking at  
24 the two documents that have a name on it, a date

Page 169

1 of birth, and a panel of what appears to be  
2 substances that were tested and what the results  
3 were. So what is your objection to the request  
4 that the document be entered into evidence?  
5 **MR. POLK:** Foundation.  
6 **HEARING OFFICER WALKER:** What do you mean by  
7 that?  
8 **MR. POLK:** That it does not establish chain of  
9 custody from Sergeant Bennett to the test results.  
10 **HEARING OFFICER WALKER:** Okay. That's the  
11 extent of your objection?  
12 **MR. POLK:** And as I further admit, there's no  
13 necessary review and, of course, there's no --  
14 there's a blank column for "Reference Range,"  
15 there's nothing that indicates what constitutes a  
16 positive or negative result. There are no  
17 thresholds. So for all of those reasons, we would  
18 object to foundation of this document as far as  
19 actually specifically being for the truth of the  
20 matter asserted that he tested not negative for  
21 all of those substances on that day.  
22 **HEARING OFFICER WALKER:** Your response?  
23 **MR. HERBERT:** In response, I would first of  
24 all note that these test results are being entered

1 merely to supplement the defense. We are not  
2 claiming that they prove that the original test  
3 result was faulty. We are not claiming that these  
4 test results in Respondent's 3 and 4 are proof  
5 that the machine was inaccurate or that an  
6 inaccurate result was generated. We are not  
7 disputing the positive result.  
8 What Respondent's 3 and 4 do is they  
9 support the affirmative defense in this case,  
10 which is that it was environmental exposure. And  
11 also, I would note that those -- that Respondent's  
12 3 and 4 were also tested at the same lab. I  
13 certainly believe that there's evidence that  
14 indicates when it was collected, by whom it was  
15 collected, there's signatures, there is no  
16 affidavits, I will agree with that, but the Board  
17 is allowed to give these documents whatever weight  
18 it chooses to give and Mr. Polk is correct that  
19 there is no indication as to what a minimum  
20 threshold level is, but the Board can use that if  
21 it so chooses to factor in a weight analysis to  
22 the results. But I would claim again that in no  
23 way invalidates these results and certainly it  
24 does not bar them from introduction.

Page 171

1 **HEARING OFFICER WALKER:** Well, if I were to  
2 summarize what you are saying that they have no  
3 purpose in your main case, then why is it being  
4 submitted for evidence?  
5 **MR. HERBERT:** Well, that's not what I meant.  
6 If that's how it came out, I apologize.  
7 What I am saying is that it doesn't  
8 refute the city's evidence regarding the positive  
9 test result. It absolutely is integral to our  
10 case to show that it's in support of our  
11 affirmative defense that it was environmental  
12 exposure and not intentional use.  
13 **HEARING OFFICER WALKER:** But none of that  
14 cures the requirements of a document as long as  
15 there's an objection to be admitted. It still has  
16 to reach the -- at least the threshold  
17 requirements for admission. It is then up to the  
18 Police Board to give it whatever weight the Police  
19 Board wishes, but the document itself to be  
20 admissible would have to meet those requirements.  
21 **MR. HERBERT:** Right. If there's no  
22 stipulation then, as I said, I am going to have to  
23 bring in live witnesses. So I am going to ask for  
24 another date if we cannot work this out.

1 <b>HEARING OFFICER WALKER:</b> Because the 2    Department's objections are valid ones to get this 3    document in for it to have any meaning -- for it 4    to be meaningful. 5    So, I am going to sustain the objection 6    unless it can be cured. 7 <b>MR. HERBERT:</b> Okay. If I can just also get 8    maybe a ruling on the record as to -- I am not 9    sure how many people the city is going to require 10   because, you know, these test results -- or these 11   samples are sometimes sent out via UPS. I am not 12   sure if they want every person that had contact 13   with this. 14 <b>HEARING OFFICER WALKER:</b> It's not what the 15   city wants. It's what is required by the rules. 16   I know that you are a very able attorney, so you 17   will know what those requirements are. I don't 18   see that you need more than one person. You just 19   have to decide which is that person that has all 20   of that information, if in fact it's only one 21   person that has all that information. 22   The basic requirements for a document, 23   you said something about signatures. I don't see 24   any signatures here. I see something under what	1    this attached page but there's still no 2    information about the collection and about how the 3    specimen was transmitted, and there's certainly no 4    information about the quality of the specimen 5    provided, length of hair, if it was dyed or 6    treated in any way. It is again just kind of a 7    freestanding test result. So again, we would 8    object as far as foundation. 9 <b>HEARING OFFICER WALKER:</b> Mr. Herbert, your 10   response? 11 <b>MR. HERBERT:</b> No response. If if they are not 12   going to stipulate, then we will bring in a live 13   witness -- 14 <b>HEARING OFFICER WALKER:</b> Okay. 15 <b>MR. HERBERT:</b> -- or live witnesses. 16 <b>HEARING OFFICER WALKER:</b> Right. And there is 17   information on this one as to the collector's 18   name, I see. There's a section for a medical 19   review officer but that is not completed. 20 <b>MR. HERBERT:</b> Because there was no -- 21 <b>HEARING OFFICER WALKER:</b> I am not sure if it 22   was necessary. 23 <b>MR. HERBERT:</b> Right, there was no medical 24   review officer.
1    was ordered, it says a physician's signature, 2    which of course is not readable because it's 3    probably signed by a physician. But other than 4    that, in terms of any signatures as to the actual 5    performance of the test, I don't see any here. I 6    see a doctor's name written. I don't know if 7    that's the doctor who ordered the exam. 8 <b>MR. HERBERT:</b> The doctor that collected the 9    exam, the time at which it was collected, the 10   sample number is indicated on there. 11 <b>HEARING OFFICER WALKER:</b> Is this Eugene? 12 <b>MR. HERBERT:</b> Yes. 13   I agree, if we don't have a stipulation, 14   then we have to have a live witness. 15 <b>HEARING OFFICER WALKER:</b> And then you need to 16   kind of clean up those pages. 17 <b>MR. HERBERT:</b> I will. 18 <b>HEARING OFFICER WALKER:</b> I will give those 19   back to you. So that's 3. 20   Now let's look at 4. You are attempting 21   to enter 4 into evidence. Okay. Any objections 22   on the part of the Department? 23 <b>MR. POLK:</b> We similarly would object. There 24   is more documentation about chain of custody with	Page 173 1    Page 175 1 <b>HEARING OFFICER WALKER:</b> Okay. And then a 2    result. 3    Now, this seems to have a bit more 4    information as to the results, the second page, 5    which is the lab report. 6    Is Quest Diagnostics the same testing lab 7    that the Department uses? 8 <b>MR. POLK:</b> Quest Diagnostics is the umbrella 9    company but, yes, in fact, specifically this was 10   the same facility, this is the Lenexa facility of 11   Quest Diagnostics which is where the police 12   department urine sample was sent. 13 <b>HEARING OFFICER WALKER:</b> Okay. So you know 14   what you need to do, correct? 15 <b>MR. HERBERT:</b> Yes. 16 <b>HEARING OFFICER WALKER:</b> Okay. So the 17   objection is sustained until it can be cured. 18 <b>MR. HERBERT:</b> So we will not rest then. 19 <b>HEARING OFFICER WALKER:</b> That is correct. 20   So logically, then, your rebuttal 21   can't really go forward until they've rested 22   because we don't know what's going to come out, if 23   anything -- 24 <b>MR. POLK:</b> Yes.

Page 176

1 **HEARING OFFICER WALKER:** -- from those  
2 persons.  
3 So is your expert here?  
4 **MR. POLK:** She should be, yes.  
5 **HEARING OFFICER WALKER:** She's on her way?  
6 **MR. POLK:** She was planning on arriving at  
7 2:00. So she's probably waiting in the --  
8 **HEARING OFFICER WALKER:** So we won't be able  
9 to use her.  
10 **MR. POLK:** Yes. If we can't rebut today, yes.  
11 **HEARING OFFICER WALKER:** All right. Other  
12 than getting these two documents in, do you have  
13 any other witnesses --  
14 **MR. HERBERT:** No.  
15 **HEARING OFFICER WALKER:** -- that we could call  
16 today?  
17 **MR. HERBERT:** No.  
18 **HEARING OFFICER WALKER:** So let's go off the  
19 record a moment and get another date.  
20 (A recess was had.)  
21 **HEARING OFFICER WALKER:** Back on the record.  
22 Based on some off-the-record discussions  
23 with both counsels, Mr. Polk has been gracious  
24 enough to agree to go back to the Department and

Page 177

1 see whether, for judicial efficiency, a  
2 stipulation can be reached with the Respondent in  
3 order to -- pertaining to the Respondent's  
4 Exhibits 3 and 4.  
5 So to give you enough time to do that, we  
6 are going to continue this matter to June 13,  
7 2013, at two o'clock p.m. for us to -- for you to  
8 come back.  
9 In the interim, both counsel will be  
10 working to see if a written stipulation can be  
11 done that at least addresses the threshold  
12 requirements for those two documents to be  
13 admitted. And then once it gets before the Police  
14 Board, then the Police Board can give it whatever  
15 weight it wishes. Okay?  
16 **MR. HERBERT:** Okay. Thank you.  
17 **HEARING OFFICER WALKER:** I will see you then.  
18 You are welcome.  
19  
20  
21  
22  
23  
24

Page 178

1 STATE OF ILLINOIS )  
2 ) SS.  
3 COUNTY OF WILL )  
4 I, PAMELA S. MORGAN, Certified Shorthand  
5 Reporter and Notary Public in and for the County  
6 of Will and State of Illinois, do hereby certify  
7 the above hearing was recorded stenographically by  
8 me and reduced to written form by means of  
9 Computer-Aided Transcription.  
10 I further certify that the foregoing  
11 transcript is a true, correct and complete record  
12 of the testimony given and of all proceedings had  
13 before me.  
14 I further certify that I am not a relative,  
15 employee, attorney or counsel of any of the  
16 parties, nor financially interested directly or  
17 indirectly in this action.  
18 In witness whereof, I have hereunto set my  
19 hand and affixed my seal of office at Joliet,  
20 Illinois, this \_\_\_\_\_ day of June, A.D. 2013.  
21  
22  
23 PAMELA S. MORGAN, CSR  
24 084-001687

12 JUN 2013 12 03  
POLICE BOARD